

1 TRINETTE G. KENT (State Bar No. 025180)
2 E-mail: tkent@kentlawpc.com
3 KENT LAW OFFICES
3219 E Camelback Rd #588
4 Phoenix, AZ 85018
Telephone: (480) 247-9644
5 Facsimile: (480) 717-4781

6 Anthony Paronich*
7 Email: anthony@paronichlaw.com
8 PARONICH LAW, P.C.
350 Lincoln Street, Suite 2400
9 Hingham, MA 02043
Telephone: (508) 221-1510
10

11 Chris R. Miltenberger*
12 Email: chris@crmlawpractice.com
13 Law Office of Chris R. Miltenberger, PLLC
1360 N. White Chapel, Suite 200
14 Southlake, Texas 76092
Telephone: (817) 416-5060

15 *Attorneys for Plaintiff*

16 *Pro hac vice motion forthcoming.
17

18 **IN THE UNITED STATES DISTRICT COURT FOR**
19 **THE DISTRICT OF ARIZONA**

20 Sylvia Morris and Jon Powell, individually
21 and on behalf of a class of all persons and
entities similarly situated,

22 Plaintiffs

23 vs.
24

25 National Cash Offer, LLC,

26 Defendant.
27
28

Case No.

CLASS ACTION COMPLAINT

Preliminary Statement

1
2 1. “Month after month, unwanted robocalls and texts, both telemarketing and
3 informational, top the list of consumer complaints received by” the Federal
4 Communications Commission (“FCC”).¹
5

6 2. Plaintiffs Sylvia Morris and Jon Powell bring this action under the
7 Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227, a federal statute
8 enacted in response to widespread public outrage about the proliferation of intrusive,
9 nuisance telemarketing practices. *See Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740,
10 745 (2012).
11

12 3. In violation of the TCPA, National Cash Offer, LLC (“Cash Offer”) made
13 telemarketing calls to a cellular telephone number of Plaintiffs for the purposes of
14 advertising their residential purchasing services using an automated dialing system which
15 is prohibited by the TCPA. Also prohibited by the TCPA, Cash Offer made multiple
16 telemarketing calls to Ms. Morris’ number that is on the National Do Not Call Registry.
17
18

19 4. The Plaintiffs never consented to receive the calls, which were placed to
20 them for telemarketing purposes. Because telemarketing campaigns generally place calls
21 to thousands or even millions of potential customers *en masse*, the Plaintiffs bring this
22 action on behalf of a proposed nationwide class of other persons who received illegal
23 telemarketing calls from or on behalf of the Defendant.
24

25 5. A class action is the best means of obtaining redress for the Defendant’s
26 wide scale illegal telemarketing and is consistent both with the private right of action
27
28

¹ *Omnibus TCPA Order*, GC Docket 02-278, FCC 15-72, 2015 WL 4387780, ¶1 (July 10, 2015).

1 afforded by the TCPA and the fairness and efficiency goals of Rule 23 of the Federal
2 Rules of Civil Procedure.

3
4 **Parties**

5 6. Plaintiff Morris is a resident of Texas.

6 7. Plaintiff Powell is also a resident of Texas.

7 8. Defendant National Cash Offer, LLC (“National Cash Offer” or
8 “Defendant”) is a limited liability company formed under the laws of the State of Arizona
9 and it maintains its principal place of business at 3030 N. 3rd St., Suite 760 in Phoenix,
10 AZ 85012. Cash Offer has a registered agent of Carlos E. Reyes, 7262 W. Kaler Ave.,
11 Glendale, AZ 85303.
12

13
14 **Jurisdiction & Venue**

15 9. The Court has subject-matter jurisdiction under 28 U.S.C. § 1331 because
16 the Plaintiff’s claims arise under federal law.
17

18 10. Venue is proper under 28 U.S.C. § 1391(b)(1) because the Defendant
19 resides in this District.
20

21 **TCPA Background**

22 11. In 1991, Congress enacted the TCPA to regulate the explosive growth of
23 the telemarketing industry. In so doing, Congress recognized that “[u]nrestricted
24 telemarketing . . . can be an intrusive invasion of privacy.” Telephone Consumer
25 Protection Act of 1991, Pub. L. No. 102-243, § 2(5) (1991) (codified at 47 U.S.C. § 227).
26 The National Do Not Call Registry
27
28

1 11. The National Do Not Call Registry allows consumers to register their
2 telephone numbers and thereby indicate their desire not to receive telephone solicitations
3 at those numbers. *See* 47 C.F.R. § 64.1200(c)(2). A listing on the Registry “must be
4 honored indefinitely, or until the registration is cancelled by the consumer or the
5 telephone number is removed by the database administrator.” *Id.*

6
7 12. The TCPA and implementing regulations prohibit the initiation of
8 telephone solicitations to residential telephone subscribers to the Registry. 47 U.S.C. §
9 227(c); 47 C.F.R. § 64.1200(c)(2).

10
11 The TCPA Prohibits Automated Telemarketing Calls

12
13 12. The TCPA makes it unlawful “to make any call (other than a call made for
14 emergency purposes or made with the prior express consent of the called party) using an
15 automatic telephone dialing system or an artificial or prerecorded voice ... to any
16 telephone number assigned to a ... cellular telephone service.” *See* 47 U.S.C. §
17 227(b)(1)(A)(iii). The TCPA provides a private cause of action to persons who receive
18 calls in violation of 47 U.S.C. § 227(b)(1)(A). *See* 47 U.S.C. § 227(b)(3).

19
20 13. According to findings by the Federal Communication Commission
21 (“FCC”), the agency Congress vested with authority to issue regulations implementing
22 the TCPA, such calls are prohibited because, as Congress found, automated or
23 prerecorded telephone calls are a greater nuisance and invasion of privacy than live
24 solicitation calls, and such calls can be costly and inconvenient.

25
26 14. The FCC also recognized that “wireless customers are charged for
27 incoming calls whether they pay in advance or after the minutes are used.” *In re Rules*
28

1 *and Regulations Implementing the Tel. Consumer Prot. Act of 1991*, CG Docket No. 02-
 2 278, Report and Order, 18 F.C.C. Rcd. 14014, 14115 ¶ 165 (2003).

3
 4 15. In 2013, the FCC required prior express written consent for all autodialed
 5 or prerecorded telemarketing calls (“robocalls”) to wireless numbers and residential lines.
 6 Specifically, it ordered that:

7 [A] consumer’s written consent to receive telemarketing robocalls must be
 8 signed and be sufficient to show that the consumer: (1) received “clear and
 9 conspicuous disclosure” of the consequences of providing the requested
 10 consent, i.e., that the consumer will receive future calls that deliver
 11 prerecorded messages by or on behalf of a specific seller; and (2) having
 12 received this information, agrees unambiguously to receive such calls at a
 13 telephone number the consumer designates.[] In addition, the written
 14 agreement must be obtained “without requiring, directly or indirectly, that
 15 the agreement be executed as a condition of purchasing any good or
 16 service.[]”

17 *In the Matter of Rules & Regulations Implementing the Tel. Consumer Prot. Act of 1991*,
 18 27 F.C.C. Rcd. 1830, 1844 (2012) (footnotes omitted).

19 The Growing Problem of Telemarketing Calls

20 16. “Robocalls and telemarketing calls are currently the number one source of
 21 consumer complaints at the FCC.” Tom Wheeler, *Cutting Off Robocalls* (July 22, 2016),
 22 <https://www.fcc.gov/news-events/blog/2016/07/22/cutting-robocalls> (statement of FCC
 23 chairman).

24 17. “The FTC receives more complaints about unwanted calls than all other
 25 complaints combined.” Staff of the Federal Trade Commission’s Bureau of Consumer
 26 Protection, *In re Rules and Regulations Implementing the Telephone Consumer*
 27 *Protection Act of 1991*, Notice of Proposed Rulemaking, CG Docket No. 02-278, at 2
 28

(2016), https://www.ftc.gov/system/files/documents/advocacy_documents/commentstaff-ftc-bureau-consumer-protection-federal-communications-commission-rulesregulations/160616robocallscomment.pdf.

18. In fiscal year 2017, the FTC received 4,501,967 complaints about robocalls, compared with 3,401,614 in 2016. Federal Trade Commission, *FTC Releases FY 2017 National Do Not Call Registry Data Book and DNC Mini Site* (Dec. 18, 2017), <https://www.ftc.gov/news-events/press-releases/2017/12/ftc-releases-fy-2017-nationaldo-not-call-registry-data-book-dnc>.

19. *The New York Times* recently reported on the skyrocketing number of robocall complaints and widespread outrage about illegal telemarketing. Tara Siegel Bernard, *Yes, It's Bad. Robocalls, and Their Scams, Are Surging*, N.Y. Times (May 6, 2018), <https://www.nytimes.com/2018/05/06/your-money/robocalls-riseillegal.html>; see also Katherine Bindley, *Why Are There So Many Robocalls? Here's What You Can Do About Them*, Wall St. J. (July 4, 2018), <https://www.wsj.com/articles/why-there-are-so-manyrobocalls-heres-what-you-can-do-about-them-1530610203>.

20. Even more recently, a technology provider combating robocalls warned that nearly half of all calls to cell phones next year will be fraudulent. Press Release, First Orion, *Nearly 50% of U.S. Mobile Traffic Will Be Scam Calls by 2019* (Sept. 12, 2018), <https://www.prnewswire.com/news-releases/nearly-50-of-us-mobile-traffic-will-be-scam-calls-by-2019-300711028.html>

Factual Allegations

21. National Cash Offer is in the business of purchasing real estate.

1 22. To generate business through purchases, National Cash Offer relies on
2 telemarketing.

3 23. One of National Cash Offer's strategies for telemarketing involves the use
4 of an automatic telephone dialing system ("ATDS") to solicit business from third parties
5 such as Plaintiffs.
6

7 24. National Cash Offer engages this use of this equipment because it allows
8 for thousands of automated calls to be placed at one time, but its telemarketing
9 representatives, who are paid by the hour, only talk to those individuals who
10 affirmatively respond.
11

12 25. Through this method, Cash Offer shifts the burden of wasted time to the
13 consumers it calls with unsolicited messages.
14

15 Calls to Ms. Morris
16

17 26. On December 26, 2018, January 11, 2019 and February 1, 2019, Ms.
18 Morris received an automated text message from the Defendant.

19 27. The text messages all had the same message:
20

21 Hi sylvia, my name is Jon, I know this is a bit random but would you
22 consider a cash offer on you property located at 1030 Mountview
23 Dr?

24 28. The message was "a bit random"; Ms. Morris has never done any business
25 with National Cash Offer and had not given them permission to contact her.

26 29. Ms. Morris' telephone number, 214-529-XXXX, is assigned to a cellular
27 telephone service.
28

1 30. Ms. Morris' telephone number, 214-529-XXXX, has been on the National
2 Do Not Call Registry for more than 30 days prior to the first text message.

3 Call to Mr. Powell
4

5 31. On February 20, 2019, Mr. Powell received an automated text message
6 from the Defendant.

7 32. The text messages said:

8 Hi %%first_name%%, my name is Brittany, I know this is a bit
9 random but would you consider a cash offer on your property
10 located at %%adress%%.

11 33. Again, the message was "a bit random"; Mr. Powell has never done any
12 business with National Cash Offer and had not given them permission to contact him.

13 34. Mr. Powell's telephone number, 817-658-XXXX, is assigned to a cellular
14 telephone service.
15

16 35. Mr. Powell did not respond to the message.
17

18 Common Allegations

19 36. The text messages were made to promote National Cash Offer's goods and
20 services.
21

22 37. The calls were made with an ATDS because they were automatically made
23 from a list of stored telephone numbers loaded into the Defendant's automated texting
24 system. This is supported by the generic nature of the text messages and the fact that all
25 the text messages had identical content.
26
27
28

1 38. Furthermore, the text to Mr. Powell revealed that a scripted and pre-loaded
2 system was designed to send identical texts, only National Cash Offer forgot to program
3 the specifics for Mr. Powell's text.
4

5 39. The calls were not necessitated by an emergency.

6 40. All parties were in the United States during the calls.

7 41. Plaintiffs' privacy has been violated by the above-described telemarketing
8 robocalls from, or on behalf of, Defendant. The calls were an annoying, harassing
9 nuisance.
10

11 42. Plaintiffs and all members of the Class, defined below, have been harmed
12 by the acts of Defendant because their privacy has been violated, they were annoyed and
13 harassed, and, in some instances, they were charged for incoming calls. The calls
14 occupied their cellular telephone lines, rendering them unavailable for legitimate
15 communication.
16
17

18 **Class Action Allegations**

19 43. As authorized by Rule 23 of the Federal Rules of Civil Procedure, Plaintiffs
20 bring this action on behalf of a class of all other persons or entities similarly situated
21 throughout the United States.
22

23 44. The class of persons Plaintiffs propose to represent are tentatively defined
24 as:
25

26 CLASS 1

27 All persons within the United States to whom: (a) Defendant and/or a third
28 party acting on their behalf, made one or more non-emergency telephone
calls; (b) to their cellular telephone number; (c) using an automatic

1 telephone dialing system or an artificial or prerecorded voice; (d) at any
2 time in the period that begins four years before the date of the filing of this
3 Complaint to trial.

4 CLASS 2

5 All persons within the United States to whom: (a) Defendant and/or a third
6 party acting on their behalf, made two or more non-emergency telephone
7 calls; (b) promoting Defendant's products or services; (c) to a residential
8 phone number that was listed on the National Do Not Call Registry; (d)
9 within any twelve-month period (e) at any time in the period that begins
10 four years before the date of the filing of this Complaint to trial.

11 Excluded from the classes are the Defendant, and any entities in which the Defendant
12 have a controlling interest, the Defendant's agents and employees, any judge to whom
13 this action is assigned and any member of such judge's staff and immediate family.

14 45. The classes as defined above are identifiable through phone records and
15 phone number databases.

16 46. The potential class members number at least in the thousands, since
17 automated telemarketing campaigns make calls to hundreds or thousands of individuals a
18 day. Individual joinder of these persons is impracticable.

19 47. Plaintiff Morris is a member of the proposed classes.

20 48. Plaintiff Powell is a member of the first class.

21 49. There are questions of law and fact common to Plaintiffs and to the
22 proposed classes, including but not limited to the following:

23 a. Whether Defendant violated the TCPA by using automated
24 telemarketing to call cellular telephones;
25
26
27
28

1 b. Whether Defendant placed calls using an automatic telephone
2 dialing system;

3 c. Whether Defendant placed calls without obtaining the recipients'
4 prior express written consent for the call;

5 d. Whether the Plaintiff and the members are entitled to statutory
6 damages because of Defendant' actions.
7

8
9 50. Plaintiffs are adequate representatives of the classes because their interests
10 do not conflict with the interests of the class, they will fairly and adequately protect the
11 interests of the class, and they are represented by counsel skilled and experienced in class
12 actions, including TCPA class actions.
13

14 51. Common questions of law and fact predominate over questions affecting
15 only individual class members. The only individual question concerns identification of
16 class members, which will be ascertainable from records maintained by Defendant and/or
17 its agents.
18

19 52. Management of these claims is likely to present significantly fewer
20 difficulties than are presented in many class claims because the calls at issue are all
21 automated. Class treatment is superior to multiple individual suits or piecemeal litigation
22 because it conserves judicial resources, promotes consistency and efficiency of
23 adjudication, provides a forum for small claimants, and deters illegal activities. There
24 will be no significant difficulty in the management of this case as a class action.
25
26
27
28

1 making calls, except for emergency purposes, to any cellular telephone numbers using an
2 ATDS and/or artificial or prerecorded voice in the future.

3
4 **Second Cause of Action**

5 **Violation of the TCPA's Do Not Call provisions**

6
7 59. Plaintiff Morris incorporates the allegations from all previous paragraphs as
8 if fully set forth herein.

9
10 60. The Defendant violated the TCPA by (a) initiating telephone solicitations to
11 persons and entities whose telephone numbers were listed on the Do Not Call Registry, or
12 (b) by the fact that others made those calls on its behalf. *See* 47 U.S.C. § 227(c); 47
13 C.F.R. § 64.1200(c)(2).
14

15 61. The Defendant's violations were negligent and/or knowing.

16 62. As a result of the Defendant's violations of the TCPA, 47 U.S.C.
17 § 227(c)(5), Plaintiff Morris and members of the Class are entitled of an award of up to
18 \$500 in damages for each call made in violation of this section. The Court may award up
19 to \$1,500 if the violation was found to be "willful or knowing".
20

21 63. Plaintiffs and members of the Class are also entitled to and do seek
22 injunctive relief prohibiting Defendant from violating the TCPA, 47 U.S.C. § 227, by
23 making calls advertising their goods or services, except for emergency purposes, to any
24 number on the National Do Not Call Registry.
25
26
27
28

Prayer for Relief

For themselves and all class members, Plaintiffs request the following relief:

- A. Certification of the proposed Classes;
- B. Appointment of Plaintiffs as representative of the Classes;
- C. Appointment of the undersigned counsel as counsel for the Classes;
- D. A declaration that Defendant's actions complained of herein violate the TCPA;
- E. An order enjoining Defendant from making automated or pre-recorded calls;
- F. An award to Plaintiff and the Classes for damages, as allowed by law;
- G. Leave to amend this Complaint to conform to the evidence presented at trial; and
- H. Orders granting such other and further relief as the Court deems necessary, just, and proper.

Plaintiff requests a jury trial as to all claims of the complaint so triable.

Dated: March 11, 2019

Respectfully Submitted,

By: /s/ Trinette G. Kent
Trinette G. Kent
Kent Law Offices
3219 E Camelback Rd #588
Phoenix, AZ 85018